

ISSUE DATE: August 20, 1997

DOCKET NO. P-3134/C-94-151

ORDER DISMISSING COMPLAINT AND CLOSING DOCKET



BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Edward A. Garvey  
Joel Jacobs  
Marshall Johnson  
Don Storm

Chair  
Commissioner  
Commissioner  
Commissioner

In the Matter of a Complaint Against the  
Association of Long Distance Users, LTD., for  
Providing Long Distance Services Without  
Commission Authority

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**PROCEDURAL HISTORY**

On May 18, 1993, the Commission received an anonymous complaint against Association for Long Distance Users, LTD (ALDU) and Advanced Communications Technologies Corporation (ACT) alleging that these two companies were providing long distance services within the State of Minnesota without Commission authority.<sup>1</sup>

On June 9, 1993, the Minnesota Department of Public Service (the Department) notified ALDU of the complaint and asked ALDU to either respond or file for a certificate of authority.

On June 23, 1993, ALDU responded to the Department's letter denying that they were providing service in Minnesota without authority.

On February 14, 1994, the Department filed this complaint with the Commission alleging that ALDU was providing telecommunications services within Minnesota in violation of Minn. Stat. §237.74, subd. 12.

On March 8, 1994, ALDU answered the Department's complaint.

On December 23, 1996, the Commission issued an Order initiating a formal investigation and requested comments from interested parties. The matter was assigned to the current docket, P-3134/C-94-151,

On January 23, 1996, ALDU filed comments.

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<sup>1</sup> Allegations regarding ACT's reselling long distance services without Commission authority was decided in Docket No. P-3094/NA-92-534. See ORDER FINDING UNAUTHORIZED OPERATION AND REQUIRING REPORT ON CURRENT STATUS AND AVAILABLE REMEDIES dated March 23, 1994 and ORDER APPROVING SETTLEMENT AND GRANTING AUTHORITY dated January 20, 1995.



On February 11, 1997, the Department filed comments.

The Commission met on July 1, 1997 to consider this matter.

## **FINDINGS AND CONCLUSIONS**

### **A. Provision of Telecommunications Service Without Authority**

ALDU does not possess a certificate of authority to provide service in Minnesota and has never filed for one.

At least for the period from June 9, 1993 through October 15, 1993, ALDU was acting as an aggregator, i.e. establishing contracts with long distance carriers which allowed ALDU to act as a gateway to discounted services that its members would not have been able to receive had they negotiated with AT&T on their own. Pursuant to such contracts, ALDU did act as a gateway to these deeply discounted rates, giving access to such rates to its clients only so long as the clients remained ALDU's clients.<sup>2</sup> In addition, AT&T, as a condition of its contract with ALDU, required ALDU to have financial responsibility for the unpaid bills of its clients (members). ALDU was, in effect, purchasing services from AT&T and providing them to its clients.<sup>3</sup>

It is true that ALDU provided other services and benefits as well as discounted telephone rates to its clients. However, the critical fact remains that access to deeply discounted rates was a benefit (commodity,) that ALDU was providing to its clients. As the Commission has previously noted, it is not relevant how ALDU calculated the fee it charged its clients/members. The fact remains that it exacted a price from the client for access to AT&T discounted telephone service and that exaction is a sale.<sup>4</sup>

In these circumstances, ALDU was (at least for the period from June 9, 1993 through October 15, 1993) acting as a telecommunications carrier, as defined by Minn. Stat. § 237.74, subd. 12, without authority to do so. In so acting, ALDU violated Minn. Stat. § 237.74, subd. 12.

### **B. Knowing and Intentional Violation**

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<sup>2</sup> In the Matter of a Request by Advanced Communications Technology for a Certificate of Authority to Resell Long Distance Services in Minnesota, Docket No. P-3094/NA-92-534, ORDER FINDING UNAUTHORIZED OPERATION AND REQUIRING REPORT ON CURRENT STATUS AND AVAILABLE REMEDIES (March 23, 1994) at page 4.

<sup>3</sup> See supra Order at page 4.

<sup>4</sup> See supra Order at page 6.



Minn. Stat. § 237.74, subd. 11(b) states:

A person who **knowingly and intentionally** violates this section or a rule or order of the Commission adopted or issued under this section shall forfeit and pay to the state a penalty, in an amount to be determined by the court, of at least \$100 and not more than \$1,000 for each day of each violation. The civil penalties provided for in this paragraph may be recovered by a civil action brought by the attorney general in the name of the state. **[Emphasis added.]**

In its most recent decisions, the Commission has explained the meaning of "knowing and intentional" by citing a 1994 Minnesota Court of Appeals case involving violations of the Minnesota Open Meeting Law, Claude v. Collins, 507 N.W. 2d 452, 457 (Minn. App. 1993), aff'd in part, 518 N.W. 2d 843 (Minn. 1994) which enunciated two requisites:

- 1) that the actor has a purpose to do the thing or cause the result specified and
- 2) that the actor has "knowledge of those facts that are necessary to make the actor's conduct criminal".

Note that it was not found necessary that the actor knew that its conduct was illegal, only that the actor intended to do (and knew that it was doing) activity that was, in fact, illegal.

Having considered this matter, the Commission finds that ALDU's statutory violation (provision of telecommunication service without authority) was not knowing and intentional. The Commission's finding in this Order, based on the analysis presented above, is that ALDU had in fact provided telecommunications service to its clients in violation of Minn. Stat. § 237.74, subd. 12. However, based on ALDU's explanation, the Commission finds that ALDU had a good faith view, during the relevant time period, that it was not providing telecommunication service to its clients.

### **C. Commission Action**

The record indicates that ALDU has discontinued the activity that violated Minn. Stat. § 237.74, subd. 11 and is not currently acting as a telecommunications carrier. Since there is no current statutory violation and the violation that occurred in the past was not knowing and intentional (as discussed above), no consideration need be given to whether the violation should be referred to the Attorney General for penalty proceedings.<sup>5</sup>

In these circumstances, the Commission will dismiss the complaint and close this docket. The Department has supported this resolution of the matter.

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<sup>5</sup> If the Commission had determined that a violation was knowing and intentional, it would then have had it within its discretion to refer the matter to the Attorney General for pursuit of penalties.



**ORDER**

1. The complaint filed by the Minnesota Department of Public Service (the Department) in this matter is dismissed.
2. The docket is hereby closed.
3. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar  
Executive Secretary

(S E A L)

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